(5)

Supreme Court, U.S.
FILED
APR 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-767

In the Supreme Court of the United States

OCTOBER TERM, 1985

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS

v.

CREST STREET COMMUNITY COUNCIL, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

CHARLES FRIED
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

CAROLYN B. KUHL
Deputy Solicitor General

RICHARD J. LAZARUS
Assistant to the Solicitor General

BRIAN K. LANDSBERG
MARIE KLIMESZ MCELDERRY
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

37pp

QUESTION PRESENTED

Whether local community organizations are entitled to recover their attorney's fees under 42 U.S.C. 1988, based on their having brought an alleged violation of Title VI of the Civil Rights of 1964, 42 U.S.C. 2000d *et seq.*, to the attention of the appropriate federal agency, and their having participated in informal negotiations sponsored by the federal agency that resulted in a favorable settlement agreement.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	8
Argument:	
Section 1988 does not authorize an award of attorney's fees to complainants in Title VI administrative proceedings when their role is confined to notification of the appropriate federal agency of a violation of Title VI of the Civil Rights Act of 1964 and to participation in informal agency-sponsored negotiations that result in a favorable settlement agreement	11
A. Title VI administrative complainants are not "part[ies]" to a "proceeding" to enforce Title VI within the meaning of Section 1988	13
B. Application of Section 1988 to Title VI administrative proceedings is inconsistent with the rationale of the decisions of this Court implying a private right of action to enforce Title VI and threatens to disrupt agency enforcement efforts	24
Conclusion	30

TABLE OF AUTHORITIES

Cases:	
Adams v. *Bell*, 711 F.2d 161, cert. denied, 465 U.S. 1021	24
Alexander v. *Choate*, No. 83-727 (Jan. 9, 1985)	1
Arriola v. *Harville*, 781 F.2d 506	23
Cannon v. *University of Chicago*, 441 U.S. 677	2, 17, 21, 24, 29
Chowdhury v. *Reading Hospital & Medical Center*, 677 F.2d 317	21

Cases—Continued: Page

Consolidated Rail Corp. v. *Darrone*, 465 U.S. 624 2
Guardians Ass'n v. *Civil Service Comm'n*, 463 U.S. 582 .... 2, 24, 25
Hensley v. *Eckerhart*, 461 U.S. 424 29
New York Gaslight Club, Inc. v. *Carey*, 447 U.S. 54 .... 6, 7, 19, 20, 26
Pennhurst State School & Hospital v. *Halderman*, 451 U.S. 1 26
Regents of the University of California v. *Bakke*, 438 U.S. 265 .... 24, 25
Webb v. *County Bd. of Educ.*, No. 83-1360 (Apr. 17, 1985) 7, 10, 19, 20, 28, 29

Statutes, regulations and rules:

Administrative Procedure Act, 5 U.S.C. 551(3) 22
Civil Rights Act of 1964:
42 U.S.C. 2000d *et seq.* 1, 2, 3, 8, 11
42 U.S.C. 2000d 8
42 U.S.C. 2000d-1 .... 9, 12, 14
42 U.S.C. 2000e-5(f) 20, 21
42 U.S.C. 2000e-5(f)(1) 26
42 U.S.C. 2000e-5(g) 21
42 U.S.C. 2000e-5(k) 6, 19, 26
Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* 2
Equal Access to Justice Act:
5 U.S.C. 504 .... 9, 22
28 U.S.C. 2412(d) 9
28 U.S.C. 2412(d)(e) 22
Federal-Aid Highway Act, 23 U.S.C. 109(h) 3
National Environmental Policy Act, 42 U.S.C. 4331 *et seq.* 3
Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*:
29 U.S.C. (Supp. V 1975) 794 2
29 U.S.C. 794a 2
Voting Rights Act of 1965, 42 U.S.C. 1973c 23
42 U.S.C. 1973*l* 23
28 U.S.C. 132 19
28 U.S.C. 143 19
28 U.S.C. 151 19

Regulations and rules—Continued: Page

28 U.S.C. 1251 19
28 U.S.C. 1358 19
28 U.S.C. 1692 19
28 U.S.C. 1875(d)(2) 20
28 U.S.C. 1915 19
28 U.S.C. 1921 19
28 U.S.C. 2462 19
42 U.S.C. 1983 .... 7, 19
42 U.S.C. 1988 .... *passim*
42 U.S.C. 3601 *et seq.* 3
7 C.F.R. Pt. 15 15
Section 15.8(c) 16
Section 15.66 16
13 C.F.R. Pt. 112 15
15 C.F.R. Pt. 8 15
Section 8.11(a) 16
22 C.F.R. Pt. 141 15
24 C.F.R.:
Pt. 1 15
Pt. 2:
Section 2.23 16
28 C.F.R. Pt. 42 Subpt. C 15
29 C.F.R. Pt. 31 15
32 C.F.R. Pt. 300 15
34 C.F.R.:
Pt. 100 15
Section 100.7(d) 16
Pt. 101:
Section 101.23 16
38 C.F.R. Pt. 18 15
Section 18b.18 16
41 C.F.R. Pt. 101-6.2 15
43 C.F.R. Pt. 17 15
45 C.F.R.:
Pt. 80 15
Section 80.7(d) 16

Regulations and rules—Continued:	Page
Pt. 81:	
Section 81.23	16
Pt. 1203	15
49 C.F.R. Pt. 21	15
Section 21.5(b) (3)	4
Section 21.11	16
Section 21.11(b)	15, 17
Section 21.11(c)	4, 15
Section 21.11(d) (1)	4
Section 21.11(d) (2)	16
Section 21.13	16
Section 21.15	16
Section 21.15(a)	16
Section 21.17	16
Exec. Order No. 12,250, 3 C.F.R. 298 (1980)	2, 15
Fed. R. Civ. P. 17-25	23
Miscellaneous:	
122 Cong. Rec. (1976):	
p. 35116	18
p. 35124	18
29 Fed. Reg. 16273-16309 (1964)	15
H.R. Rep. 94-1558, 94th Cong., 2d Sess. (1976)	20, 28
S. Rep. 94-1011, 94th Cong., 2d Sess. (1976)	20

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-767

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS

v.

CREST STREET COMMUNITY COUNCIL, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

Federal agencies have the primary enforcement responsibility under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, for ensuring that any program or activity receiving federal financial assistance does not unlawfully discriminate on the basis of race, color, or national origin. Accordingly, federal agencies have promulgated implementing regulations setting forth Title VI investigation and enforcement procedures. As this Court has frequently noted, the Department of Justice played a central role both in the drafting of Title VI and in the development of the various agencies' implementing regulations. See, *e.g.*, *Alexander* v. *Choate*, No. 83-727 (Jan. 9,

1985), slip op. 7 n.11; *Guardians Ass'n* v. *Civil Service Comm'n*, 463 U.S. 582, 592 (1983) (opinion of White, J.); see also Exec. Order No. 12,250, 3 C.F.R. 298 (1980) (Department of Justice responsible for approving and coordinating federal agency Title VI programs). The issue in this case, whether attorney's fees are available under 42 U.S.C. 1988 for time spent participating in agency enforcement proceedings, requires consideration of the nature of Title VI administrative proceedings and the relationship of the federal agency enforcement process to private Title VI enforcement. If attorney's fees are made available, the enforcement scheme Congress created will be altered in a manner that threatens to interfere with federal agencies' administrative enforcement responsibilities.[1]

STATEMENT

This case concerns whether a person who complains to a federal agency that a recipient of federal funds is engaging in discrimination in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, may recover attorney's fees under 42 U.S.C. 1988 for time spent in informal negotiations sponsored by the federal government to resolve those allegations. Respondents are several local civic and

[1] The federal interest in this case extends to federal agency enforcement of both Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. (Supp. V 1975) 794, both of which were generally patterned after Title VI (see *Cannon* v. *University of Chicago*, 441 U.S. 677, 684-685 (1979) (Tit. IX); *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624, 626, 632-633 n.13 (1984) (§ 504)). The attorney's fee provision of 42 U.S.C. 1988 applies to Title IX and the attorney's fee provision of the Rehabilitation Act, 29 U.S.C. 794a, uses language similar to that contained in Section 1988.

church organizations representing the interests of residents of a stable, cohesive, predominately black, neighborhood (Crest Street) in Durham, North Carolina (Pet. App. 2). They complained to the United States Department of Transportation (USDOT) that petitioners, two state transportation agencies and the state official in charge of both agencies, had violated Title VI. The merits of the dispute were entirely resolved through USDOT's informal conciliation efforts (*id.* at 22-25). Respondents then filed this lawsuit for the sole purpose of recovering attorney's fees for time spent participating in the agency's negotiation process. The district court dismissed the complaint for failure to state a claim, but the Fourth Circuit reversed (*id.* at 1-21, 22-40).

1. In September 1978, two of the respondents submitted a "complaint" with USDOT alleging, inter alia, that petitioners' proposed highway extension project would violate various federal environmental, transportation, and civil rights laws, including the National Environmental Policy Act, 42 U.S.C. 4331 *et seq.*, the Federal-Aid Highway Act, 23 U.S.C. 109(h), and Titles VI and VIII of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, 3601 *et seq.* (Pet. App. 23 & n.1; J.A. 73-96). Respondents sought to prohibit further planning or construction of the highway project by petitioners until the project was brought into compliance with these federal laws (Pet. App. 24). Respondents' Title VI claim was based on the allegation that the highway extension project was receiving federal financial assistance and that its proposed location would, by destroying the Crest Street neighborhood, displace a disproportionately large number of blacks (J.A. 80-81, 86).

2. Having received "information indicat[ing] a possible failure to comply with [Title VI]" USDOT initiated an investigation of petitioners' "practices and policies" (see 49 C.F.R. 21.11(c)) (Pet. App. 24). In February 1980, USDOT informed petitioners that its investigation had resulted in a preliminary finding of reasonable cause to believe that the proposed highway extension would be a prima facie violation of Title VI and USDOT's implementing regulations (Pet. App. 3, 24; J.A. 97-99).[2] Accordingly, USDOT pursued "informal means" (see 49 C.F.R. 21.11(d)(1)) of resolving petitioners' apparent noncompliance by initiating informal negotiations with petitioners (Pet. App. 4, 24). Representatives of the Federal Highway Administration, the City of Durham, and opponents of the highway, including respondents, participated in these negotiations (*ibid.*). By February 1982, respondents and petitioners had reached a preliminary agreement on freeway design, relocation assistance benefits, and other assistance to mitigate the project's adverse impact, and were continuing to negotiate on remaining aspects of alleged discrimination (*id.* at 4, 25).

In August 1982, with negotiations ongoing, petitioners moved to dissolve a 1973 judicial decree that

---

[2] The letter from USDOT referred specifically to 49 C.F.R. 21.5(b)(3), which provides:

> In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

had enjoined the proposed highway extension based on noncompliance with various federal environmental and transportation laws, unrelated to Title VI (Pet. App. 5, 25). On October 15, 1982, respondents moved to intervene in that pending judicial action, alleging violation of federal environmental, transportation, uniform relocation assistance, and civil rights laws, including Title VI (*ibid.*; J.A. 100-102). On December 14, 1982, without ever having acted on respondents' intervention motion, the district court entered a consent judgment dissolving the injunction and dismissing the original lawsuit upon which the injunction was based (Pet. App. 5-6; J.A. 153-157). The consent judgment also announced that on November 19, 1982, respondents and petitioners had reached agreement on those matters remaining in controversy and, accordingly, respondents did not oppose dissolution of the injunction, yet "reserve[d] their claim for attorney[']s fees against [petitioners]" (Pet. App. 6 n.6; J.A. 155). Respondents signed the consent judgment in their capacity as applicants for intervention (J.A. 156). Petitioners and respondents and the City of Durham executed a Final Mitigation Plan, which provided respondents with substantial relief, in a public ceremony the day after the court order (Pet. App. 6; J.A. 108-130).

3. On November 30, 1983, respondents filed this action against petitioners for recovery of attorney's fees based on 42 U.S.C. 1988 (Pet. App. 27; J.A. 3-52). Respondents claimed they were "prevailing part[ies]" within the meaning of that statutory provision and, accordingly, entitled to recovery of attorney's fees (J.A. 8-9). The fee request covered five years and eight months—from the date re-

spondents first hired legal counsel to the date of the announcement of the Final Mitigation Plan—and totaled 1,261.25 hours of attorney time, all but 37 hours of which was time spent prior to the motion to intervene, and over half of which occurred prior to initiation of the USDOT informal conciliation process (Pet. App. 30; J.A. 10-52).

The district court granted petitioners' motion to dismiss for failure to state a claim and for judgment on the pleadings (Pet. App. 22-40). The court held that Section 1988 does not authorize an award of attorney's fees for work performed in Title VI federal agency administrative proceedings (Pet. App. 35-36). The court distinguished on several grounds this Court's ruling in *New York Gaslight Club, Inc* v. *Carey*, 447 U.S. 54 (1980), that identical language relating to attorney's fees for private enforcement of Title VII (see 42 U.S.C. 2000e-5(k)) did include work performed in Title VII state administrative proceedings (Pet. App. 33-34). In particular, the district court noted that for Title VI, unlike Title VII, exhaustion of administrative remedies is not required prior to filing a private lawsuit, those remedies "not [being] integral parts of [respondents'] federal court remedy" (*id.* at 34, 35).[3] According to the district court, "administrative proceedings under Title VI * * * seem particularly unsuited for an award of fees because individuals, beyond filing an administrative complaint, have little input or control into the decisional process" (*ibid.*); the complainant "is not a mandatory party to the USDOT investigation nor to any action or in-

[3] The court rejected (Pet. App. 36-37) respondents' contention that it was reasonable for them to believe in September 1978 (the date respondents filed their administrative complaint) that exhaustion of administrative remedies was necessary.

action taken with respect to the recipient of federal funds" (*id.* at 37). Finally, the court concluded (*id.* at 38) that respondents were not entitled to attorney's fees for the small portion of time allocated to the effort to intervene in the pending district court lawsuit. Specifically, the court found that "there [was] no evidence that the * * * effort[] * * * significantly contributed to the execution of * * * [or] was even a catalyst to the Plan" (*id.* at 39).

4. The court of appeals reversed (Pet. App. 1-21). At the outset, the court noted that petitioners "concede that [respondents] gained substantial relief that was causally related to their administrative complaint and that [respondents] therefore are 'prevailing parties'" (*id.* at 8). The court went on to hold (*id.* at 8-13) that the word "proceeding" in Section 1988 embraced "administrative proceeding," relying on *New York Gaslight Club, Inc.* v. *Carey*, *supra*, and that the USDOT proceeding initiated by respondents' complaint was a "proceeding to enforce" Title VI, within the meaning of Section 1988. The court of appeals reasoned, moreover, that federal administrative proceedings under Title VI could be "analogized to * * * mandatory [administrative] procedures" because "[t]hey are the primary and perhaps the only remedy for violation of * * * [T]itle [VI]" (Pet. App. 13).

The court rejected petitioners' contention that *Webb* v. *County Bd. of Educ.*, No. 83-1360 (Apr. 17, 1985), supported denial of respondents' claim for attorney's fees. In *Webb*, this Court held that a party who had prevailed in his 42 U.S.C. 1983 lawsuit was not entitled to recovery of attorney's fees for time spent in state administrative proceedings pursuing state law claims that related to the same incident. The court of appeals concluded that *Webb*

stood for the proposition that administrative proceedings could be the proper subject of a Section 1988 attorney's fees claim so long as the procedures were "important parts of the statutory enforcement scheme[,]" which, the court held, Title VI federal administrative procedures were (Pet. App. 18). Finally, the court of appeals concluded that Section 1988 authorized an independent action to recover attorney's fees for time spent in an administrative proceeding, but that "[e]ven i[f] some type of court action were required to trigger § 1988's fee provision, [respondents] would still have a claim to fees by virtue of their proposed complaint and motion to intervene in the [pending district court] action" (*id.* at 20).

SUMMARY OF ARGUMENT

The court of appeals' decision below, awarding respondents attorney's fees under Section 1988 for time spent in Title VI administrative proceedings, misapplies 42 U.S.C. 1988 and rests on a misconception of the role of private parties, such as respondents, in Title VI administrative proceedings. Section 1988 provides that "[i]n any action or proceeding to enforce a provision of" certain civil rights laws, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, the court may award the "prevailing party" attorney's fees as part of the party's costs. Title VI prohibits any discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance (42 U.S.C. 2000d) and, to that end, confers upon federal agencies dispensing federal financial assistance the primary responsibility for enforcing that mandate. Specifically, Title VI authorizes each agency to terminate or refuse to grant financial assistance, or to pursue other authorized means of achieving Title VI compliance, upon an express finding (on the record) of a Title VI violation, provided that the agency first determines that Title VI "compliance cannot be secured by voluntary means" (42 U.S.C. 2000d-1).

An individual or group may, as respondents did here, set in motion a federal agency investigation and compliance review by notifying the agency of an alleged Title VI violation, but the private complainant is not a formal "party" to those agency efforts, as required by Section 1988, nor are the agency's efforts to secure voluntary means of compliance "proceeding[s]" to enforce Title VI, within the meaning of Section 1988. By express congressional design, Title VI's administrative enforcement scheme relies on internal federal agency proceedings, within which the agency, as investigator and enforcer, possesses wide discretion to devote investigation resources, promote conciliation efforts, devise remedial schemes, and make funding termination determinations.

Nor is there any basis for supposing that Congress had a different understanding of the nature of Title VI administrative proceedings when Congress enacted Section 1988. The legislative history surrounding enactment of Section 1988 reveals that Congress intended that Section 1988 would apply only to private Title VI enforcement actions brought in court; there is no suggestion that Section 1988 would apply to Title VI administrative proceedings, especially informal agency-sponsored negotiations, which are not even within the embrace of an attorney's fee provision, such as the Equal Access to Justice Act, 5 U.S.C. 504, 28 U.S.C. 2412(d), that specifically al-

lows awards for time spent in administrative proceedings.

Section 1988 applies, in all events, only to an administrative proceeding that is an "integral" component of private enforcement of federal civil rights law (see *Webb* v. *County Bd. of Educ.*, No. 83-1360 (Apr. 17, 1985), slip op. 6), and Title VI administrative proceedings do not fit this description. Indeed, a major consideration leading to this Court's endorsement, with our support, of an implied private right of action to enforce Title VI in court, was the absence of a private administrative enforcement mechanism in Title VI. The practical effect of respondents' (and the court of appeals') expansive reading of private enforcement of Title VI would be, however, to convert the federal agency enforcement mechanism into the very avenue for private enforcement that this Court had assumed Title VI to lack. Congress enacted Title VI pursuant to its power under the Spending Clause and, consequently, the force of the Title VI nondiscrimination mandate depends on a potential grantee of federal financial assistance accepting the funds, including the conditions attached to their receipt. It is no doubt largely for this reason that Congress instructed federal agencies to enforce Title VI primarily through securing "voluntary" compliance. Respondents' view of the role of private enforcement in administrative proceedings takes no account of these significant congressional concerns and threatens to undercut the effectiveness of Title VI.

Finally, any argument that our view of private enforcement of Title VI will promote the premature filing of private lawsuits is without merit. The availability of a private right of action to sue a recipient of federal financial assistance in court is always limited by the federal agency's right to use its administrative process to resolve the controversy either on its own or, should the agency prefer, with the assistance of both the complainant and the recipient. Consequently, a preemptive filing of a lawsuit by a complainant would not entitle the complainant to an award of attorney's fees in the event (as in this case) that the federal agency efforts led to a favorable resolution. Otherwise, private causes of action to enforce Title VI, implied by the judiciary, could usurp the federal agency enforcement mechanism of Title VI, expressly created by Congress. We can not suppose that Congress intended such a result in enacting either Title VI itself or the attorney's fee provision of Section 1988.

ARGUMENT

SECTION 1988 DOES NOT AUTHORIZE AN AWARD OF ATTORNEY'S FEES TO COMPLAINANTS IN TITLE VI ADMINISTRATIVE PROCEEDINGS WHEN THEIR ROLE IS CONFINED TO NOTIFICATION OF THE APPROPRIATE FEDERAL AGENCY OF A VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND TO PARTICIPATION IN INFORMAL AGENCY-SPONSORED NEGOTIATIONS THAT RESULT IN A FAVORABLE SETTLEMENT AGREEMENT

The decision of the court of appeals below, reversing the district court's dismissal of respondents' claim for attorney's fees, fundamentally misconceives the federal agency administrative enforcement scheme of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, expressly created by Congress for the investigation and resolution of allegations of Title VI violations. The statutory language of Title VI, its legislative history, and decisions of this Court re-

flect the settled view that the administrative enforcement process created by Congress is exclusively a *federal agency* enforcement mechanism, in which private parties, such as respondents, have no statutorily defined investigatory or enforcement role, and may participate only at the invitation of the appropriate federal agency. Congress deliberately chose to provide federal agencies with wide discretion in investigating and remedying Title VI violations, largely in response to the special nature of requirements, such as those in Title VI, that depend on the recipient's continued acceptance of federal funding.

The court of appeals incorrectly assumed, however, that Congress created the administrative enforcement framework to provide for *private* enforcement of Title VI. Under the court of appeals' reading of Title VI, private individuals or groups, such as respondents, have formal "party" status in internal federal agency enforcement and remedial efforts and are entitled to an award of attorney's fees for "prevailing" based on their participation in agency efforts to resolve Title VI disputes. In this case, the agency "proceeding[s]" in which respondents participated were a series of informal negotiations sponsored by USDOT to promote, pursuant to explicit statutory command (see 42 U.S.C. 2000d-1), "voluntary means" of Title VI compliance. We believe that the court of appeals' construction of Title VI is at odds with congressional intent and would undermine the ability of federal agencies to investigate allegations of Title VI violations and, if found, to remedy the problem, particularly through voluntary means, as required by the statute. Certainly, nothing in Section 1988 supports such a dramatic reworking of federal agency enforcement of Title VI. For this

reason, we support reversal of the decision of the court of appeals below and agree with petitioners that respondents' claim for attorney's fees should be dismissed.

A. Title VI Administrative Complainants Are Not "Part[ies]" To A "Proceeding" To Enforce Title VI Within The Meaning Of Section 1988

Respondents base their claim for attorney's fees on 42 U.S.C. 1988, which provides that "[i]n any action or proceeding to enforce a provision of" certain civil rights laws, including Title VI, the court may award the "prevailing party" attorney's fees as part of the party's costs. Although we have no quarrel with the notion that respondents' cause "prevailed," in the sense that the Final Mitigation Plan extends substantial relief to those interests represented by respondents, we do not believe that respondents meet the remainder of Section 1988's requirements. Respondents participated in the informal negotiations sponsored by USDOT, but without the formal "party" status required by Section 1988. And those informal negotiations were, in all events, not "proceeding[s] to enforce * * * Title VI" within the meaning of Section 1988.[4]

---

[4] Examination of the record suggests that petitioners' apparent concession below, noted by the court of appeals (Pet. App. 8), that respondents were "prevailing parties" was directed to respondents' "prevailing" status, and not to their status as formal "parties." As described by the court of appeals, petitioners admitted only that respondents "gained substantial relief that was causally related to their administrative complaint" (*ibid.*). We do not read this "concession" as disturbing the separate argument, relied on in part by the district court (*id.* at 37), that respondents did not possess formal "party" status in the informal negotiations sponsored by USDOT.

The structure of Title VI makes clear that federal agency enforcement proceedings are meant to focus primarily on assuring the funding recipient's compliance with Title VI rather than on providing individualized relief to victims of discrimination. Title VI contemplates that the federal agency will function in a classic law enforcement capacity, representing the public interest rather than enforcing the rights of particular complainants. The statute defines the funding recipient's rights and the funding agency's enforcement tools, but it does not define any role in the investigation or enforcement process for a person who complains of the recipient's conduct.

In Title VI, Congress conferred upon those federal agencies dispensing federal financial assistance the primary responsibility for ensuring that programs or activities supported do not discriminate on the basis of race, color, or national origin (42 U.S.C. 2000d-1). Title VI authorizes each agency to terminate or refuse to grant assistance to a recipient of federal financial assistance, or to pursue other authorized means to achieve Title VI compliance, upon an express finding on the record, after opportunity for hearing, of a Title VI violation (*ibid.*). Termination of or refusal to grant assistance is limited both to the particular recipient (including any part thereof) found to be in noncompliance, and to the particular program in which noncompliance is found. The statute provides, moreover, that the agency may not take remedial action until after advising the recipient of the failure to comply and after determining that "compliance cannot be secured by voluntary means" (*ibid.*).

Reflecting this express statutory mandate, the various federal agencies, with the advice and approval of

the Department of Justice (see Exec. Order No. 12,250, 3 C.F.R. 298 (1980)), have promulgated Title VI implementing regulations that establish an administrative procedural framework for using complaints as a tool in Title VI enforcement rather than considering complaint resolution as an end in itself. Typically, the regulations outline an enforcement scheme that relies on pre-commitment compliance reviews, periodic compliance reports, and compliance investigations (in the event that subsequently acquired information suggests the possibility of a violation).[5] Although USDOT regulations, like those of most federal agencies, provide that the Secretary will investigate upon receiving any "information indicat[ing] a possible failure to comply with [Title VI]" (49 C.F.R. 21.11 (c)), complaint by a person who claims to be a victim of unlawful discrimination is only one possible source of such information (49 C.F.R. 21.11(b)). To effect compliance, the agency must first use "informal" or "voluntary" compliance efforts before resort to a formal adjudicatory hearing that could

[5] See generally ACTION, 45 C.F.R. Pt. 1203; Department of Agriculture, 7 C.F.R. Pt. 15; Department of Commerce, 15 C.F.R. Pt. 8; Department of Defense, 32 C.F.R. Pt. 300; Department of Education, 34 C.F.R. Pt. 100; General Services Administration, 41 C.F.R. Pt. 101-6.2; Department of Health and Human Services, 45 C.F.R. Pt. 80; Department of Housing and Urban Development, 24 C.F.R. Pt. 1; Department of the Interior, 43 C.F.R. Pt. 17; Department of Justice, 28 C.F.R. Pt. 42 Subpt. C; Department of Labor, 29 C.F.R. Pt. 31; Small Business Administration, 13 C.F.R. Pt. 112; Department of State, 22 C.F.R. Pt. 141; Department of Transportation, 49 C.F.R. Pt. 21; Veterans Administration, 38 C.F.R. Pt. 18. The first Title VI regulations were published on December 4, 1964. See 29 Fed. Reg. 16273-16309.

lead to a funding cut-off (49 C.F.R. 21.13).[6] In those circumstances when evidence of discrimination has been supplied by a person who claims to be a victim, the regulations provide only that the complainant should be advised of the results of USDOT's investigation (49 C.F.R. 21.11(d)(2)). Even when formal administrative hearings are held, the complainant is only advised of the time and place of the hearings (49 C.F.R. 21.15(a)). The complainant plays no formal role in *any* of the administrative proceedings (49 C.F.R. 21.11, 21.13, 21.15, 21.17). Indeed, the regulations of many federal agencies explicitly provide that a complainant is not a "party" to any agency proceedings resulting from his complaint.[7]

---

[6] See also 7 C.F.R. 15.8(c) (Department of Agriculture); 15 C.F.R. 8.11(a) (Department of Commerce); 34 C.F.R. 100.7(d) (Department of Education); 45 C.F.R. 80.7(d) (Department of Health and Human Services).

[7] Those agencies that have formally promulgated detailed Title VI procedural regulations expressly declare the nonparty status of the complainant. See, *e.g.*, 34 C.F.R. 101.23 (Department of Education) ("A person submitting a complaint pursuant to [the Department's complaint procedure] is not a party to the proceedings governed by [these regulations], but may petition, after proceedings are initiated, to become an amicus curiae."); 7 C.F.R. 15.66 (Department of Agriculture) ("person submitting a complaint * * * is not a party"); 24 C.F.R. 2.23 (Department of Housing and Urban Development) (same); 38 C.F.R. 18b.18 (Veterans Administration) (same); 45 C.F.R. 81.23 (Department of Health and Human Services) (same). The USDOT Title VI regulations, which do not include such detailed procedural regulations, do not explicitly declare the nonparty status of the complainant, but the import of the regulations is clear, given that the complainant is provided with no formal role in any of the proceedings. The nonparty status of a complainant is also confirmed by the lenient standards established by the USDOT regulations for defining who can be a complainant. Under USDOT regulations, a person does not have to allege that he has been subjected to unlawful discrimination, or even that he represents others who have been. (49 C.F.R. 21.11(b)). To be a complainant, it is enough to allege that "any specific class of persons [is] be[ing] subjected to discrimination * * *" (*ibid.*).

Thus, consistent with the deliberate congressional statutory design, the administrative framework for ensuring compliance with the Title VI nondiscrimination mandate is primarily a mechanism for the federal agency to ensure compliance with Title VI, rather than an avenue for private enforcement. The submission of a complaint by private entities, such as respondents in this case, provides only one of several means of triggering initiation of the federal agency administrative compliance review and enforcement process. The proceedings that result remain under the exclusive control of the federal agency, within which the government, as investigator and enforcer, possesses wide discretion to devote investigation resources, promote conciliation efforts, devise remedial schemes, and make fund-termination determinations. As described by this Court in *Cannon* v. *University of Chicago*, 441 U.S. 677, 707 n.41 (1979) (citations omitted), in the context of Title IX (which was patterned after Title VI):

> [The statute] confers a benefit on a class of persons * * * [but does not] assure those persons the ability to activate and participate in the administrative process contemplated by the statute. * * * [T]he complaint procedure adopted by [the federal agency implementing regulations] does not allow the complainant to participate in the investigation or subsequent enforcement proceedings. Moreover, even if those proceedings result in a finding of a violation, a resulting

> voluntary compliance agreement need not include relief for the complainant. Furthermore, the agency may simply decide not to investigate —a decision that often will be based on a lack of enforcement resources, rather than on any conclusion on the merits of the complaint.

The decision of the court of appeals below, by assuming complainants had formal "party" status, misapprehended the true nature of the proceedings and, as a result, misapplied Section 1988.

2. Examination of the legislative history surrounding the enactment of Section 1988 further confirms the view that Congress did not intend to apply Section 1988 to Title VI administrative proceedings. During the 1976 debates on Section 1988 on the floor of the House of Representatives, several members questioned the significance of the reference in Section 1988 to Title VI, on the ground that it was not clear that Title VI provided for a private right of action. See 122 Cong. Rec. 35116 (1976) (remarks of Rep. Quie); see also *ibid.* (remarks of Rep. Bauman). Rather than suggest that Section 1988 would apply to "prevailing complainants" who participated in the federal administrative process provided by Title VI (then reflected in the implementing regulations of the various federal agencies), a major proponent of the bill simply replied: "This bill merely creates a remedy in the event the courts determine that an individual may sue under these statutes" (*id.* at 35124) (remarks of Rep. Railsback); see also *id.* at 35116 (same). No Member of Congress suggested, or appears to have seriously contemplated, that Section 1988 would apply to Title VI apart from any judicially created private right of action to enforce Title VI *in courts*. Respondents, however, do not base

their Section 1988 claim for attorney's fees on such a judicially created private right of action to enforce Title VI in court. Their novel claim is based instead on participation in federally sponsored informal negotiations, available under the statute totally apart from any private enforcement rights implied by this Court subsequent to the enactment of Section 1988.

3. Contrary to respondents' view (Br. in Opp. 9-13), neither *New York Gaslight Club, Inc.* v. *Carey*, 447 U.S. 54 (1980), construing a virtually identical attorney's fee provision applicable to Title VII (42 U.S.C. 2000e-5(k)), nor *Webb* v. *County Bd. of Educ.*, No. 83-1360 (Apr. 17, 1985), construing Section 1988 in the context of a claim for attorney's fees based on a successful action brought under Section 1983, supports respondents' cause. Indeed, these two decisions are better read as supporting no fee award in the circumstances of this case. Most fundamentally, although *Carey* certainly stands for the proposition that the term "proceeding" in an attorney's fee provision *may* include an administrative proceeding, *Webb* makes clear that under Section 1988 a person is not automatically entitled to an attorney's fees award for participation in *any* administrative proceeding related to that person's civil rights claim.[8] Instead, a court entertaining a Sec-

---

[8] The meaning of the term "proceeding" is not, of course, generally confined to administrative proceedings and refers more typically to types of judicial proceedings. See, *e.g.*, 28 U.S.C. 1251 (original and exclusive jurisdiction lies in this Court for "actions or proceedings" involving ambassadors and other foreign officials and for "actions or proceedings by a State against citizens of another State or against aliens"); see also 28 U.S.C. 132, 143, 151, 1358, 1692, 1915, 1921, 2462. For that reason, the inclusion of the term "proceeding" in an attorney's fee provision does not, by itself, compel the conclusion that Congress intended to extend awards to all admin-

tion 1988 claim must consider the nature of the administrative proceeding, particularly whether the proceeding is an "integral" component of the private enforcement scheme (*Webb*, slip op. 6). As explained in *Webb* (*id.* at 5-7), the prevailing litigants in *Carey* were entitled to attorney's fees for time spent in administrative proceedings only because those proceedings were an essential, indeed mandatory, part of private enforcement of the relevant statutory scheme (Title VII). In contrast, the prevailing litigant was not entitled to attorney's fees for time spent in the administrative proceedings in *Webb* because they were "not any part of the proceedings to enforce § 1983" (*id.* 6-7).

A similar comparison of the nature of the administrative "proceedings" at issue in this case to those in *Carey* compels, as in *Webb*, the conclusion that Section 1988 does not authorize an award of attorney's fees to respondents. Here, unlike in *Carey* (447 U.S. at 65; see 42 U.S.C. 2000e-5(f)) and as in *Webb*

istrative proceedings. For instance, 28 U.S.C. 1875(d)(2), which provides for attorney's fees awards to an employee who prevails in his claim that an employer unlawfully discriminated against the employee based on his service on a jury, refers to "any action or proceeding," even though the statute nowhere contemplates any administrative proceedings. In *Carey*, moreover, the Court looked not just to the word "proceeding," but more broadly to the legislative history and structure of Title VII before concluding that administrative proceedings were covered by the relevant attorney's fee provision (see 447 U.S. at 62-64). In contrast, as this Court noted in *Webb* (slip op. 7 n.16), there are "numerous references in [Section 1988's] legislative history to promoting the enforcement of the civil rights statutes 'in suits,' 'through the courts' and by 'judicial process'" (quoting S. Rep. 94-1011, 94th Cong., 2d Sess. 2, 6 (1976); H.R. Rep. 94-1558, 94th Cong., 2d Sess. 1 (1976)).

(slip op. 6), respondents were not required to participate in the administrative proceedings for which they now claim entitlement to attorney's fees. See, *e.g.*, *Chowdhury* v. *Reading Hospital & Medical Center*, 677 F.2d 317, 322 (3d Cir. 1982) ("exhaustion of the agency funding termination procedures * * * [is not] a prerequisite to a private action"), cert. denied, 463 U.S. 1229 (1983).[9] Even more importantly, however, the relationship of the federal administrative proceedings to the interest of the individual complainant is fundamentally different in Titles VI and VII. The federal (and related state) administrative proceedings under Title VII, unlike Title VI, are statutorily designed to resolve the *individual complainant's* claim of discrimination; the Equal Employment Opportunity Commission (EEOC), for instance, is empowered to bring civil suits on the individual's behalf, seeking reinstatement, back pay, and injunctive relief (see 42 U.S.C. 2000e-5(g)). Title VII, moreover, specifically contemplates the EEOC "enter[ing] into a conciliation agreement to which *the person aggrieved is a party*" (42 U.S.C. 2000e-5(f) (emphasis added)).

In contrast, the Title VI administrative process, as described above, is consciously directed not to the interests of the individual complainant, but more broadly concerned with the relationship of the federal agency to the recipient of federal financial assistance. The complainant is not even a formal "party" even when the agency holds a formal ad-

[9] As this Court has previously noted, the position of the federal government has been that private enforcement of Title IX (or Title VI) does not require prior exhaustion of administrative remedies. See *Cannon* v. *University of Chicago*, 441 U.S. at 687-688 n.8.

ministrative hearing, much less when the agency conducts "informal" negotiations and "voluntary" conciliation. The complainant may participate only when invited by the federal agency. Hence, while the federal administrative framework of compliance review and enforcement is an essential part of Title VI enforcement, it is not an "integral" component of *private* Title VI enforcement; Section 1988 applies only to the latter circumstance.

4. Finally, we note that an extension of the scope of attorney's fee awards to include informal agency negotiations, such as those that took place in this case, would be unprecedented. Even in the Equal Access to Justice Act, 5 U.S.C. 504, 28 U.S.C. 2412 (d)(3), where Congress expressly authorizes attorney's fee awards for time spent in administrative proceedings, the scope of the term "proceedings" is limited to *adversary* adjudications and does not embrace informal agency proceedings, such as the informal negotiations at issue in this case. Fee awards under the Equal Access to Justice Act are further limited to a "party" to the adjudicatory proceedings (*ibid.*), which, as described above, is a status respondents did not possess.[10]

---

[10] The Equal Access to Justice Act defines "party," by reference to the Administrative Procedure Act, 5 U.S.C. 551(3), as "a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party * * * [or] admitted by an agency as a party for limited purposes." Respondents would not meet this definition. If every person who complained to a federal agency about a violation of Title VI automatically became a party to the federal compliance review and enforcement process, the administrative scheme would become so cumbersome as to be ineffective.

A recent Fifth Circuit decision, *Arriola* v. *Harville*, 781 F.2d 506 (1986), construing Section 14 of the Voting Rights Act of 1965, 42 U.S.C. 1973*l*, similarly cuts against respondents' claim for attorney's fees. Section 14 of the Voting Rights Act contains an attorney's fee provision virtually identical to Section 1988, authorizing fees to a prevailing party in "any action or proceeding to enforce the voting guarantees" of the Constitution (42 U.S.C. 1973*l*). In *Arriola*, the Fifth Circuit concluded that individuals who participate in the preclearance process under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, are not entitled to an award of fees, relying on the nonadversary nature of the preclearance process and the limited role of third parties in the process (781 F.2d at 510). The Fifth Circuit stressed several factors, including how (1) " 'action or proceeding' commonly refers to some sort of adversary proceeding in the nature of a traditional lawsuit" (*ibid.*); (2) "[t]he preclearance process was developed * * * to *avoid* a judicial decision" (*ibid.* (emphasis in original)); and (3) "interested individuals and groups have none of the rights of parties" (*ibid.*). These same factors are present in this case and equally support dismissal of respondents' Section 1988 claim.

Just as there are rules that govern who may be a party to a lawsuit (see Fed. R. Civ. P. 17-25), so too there must be a procedure for limiting the parties to the federal administrative process. That respondents participated in the agency's informal conciliation efforts did not, moreover, convert the federal administrative process into an alternative forum for the complainant to engage in an adversary "proceeding" with the federal-aid recipient, within the meaning of Section 1988.

B. Application Of Section 1988 To Title VI Administrative Proceedings Is Inconsistent With The Rationale Of The Decisions Of This Court Implying A Private Right Of Action To Enforce Title VI And Threatens To Disrupt Agency Enforcement Efforts

1. Denial of respondents' attorney's fees claim does not detract, moreover, from the important, yet distinct, role of private enforcement of Title VI endorsed by this Court. A majority of this Court, with the urging of the federal government, has adopted the view that there exists a "private right of action," implied by the judiciary, to enforce both Title VI and Title IX against the recipients of federal funds. See *Regents of the University of California* v. *Bakke*, 438 U.S. 265, 419-420 & n.26 (1978) (opinion of Stevens, J.) citing U.S. Supp. Br. Amicus Curiae at 24-34 (*Bakke*); *Cannon* v. *University of Chicago*, 441 U.S. at 702 & n.33, 707-708 & nn. 41 & 42; see also *Guardians Ass'n* v. *Civil Service Comm'n*, 463 U.S. 582, 593-595 (1983) (opinion of White, J.). Respondents, however, seek to expand and alter the role of private enforcement of Title VI in a manner that ignores the rationale of those earlier decisions and that threatens to interfere with federal enforcement efforts.

In particular, this Court allowed private rights of action under Title VI in part to avoid "the disrupti[on] of [agency's] efforts efficiently to allocate its enforcement resources" that a suit to compel either agency investigation or termination of agency funding would create (*Cannon*, 441 U.S. at 707 n.41). The Court was also motivated by its understanding of the nature of administrative agency enforcement, which was not, by congressional design, intended to protect the interests of the individual complainant (*ibid.*; see also *Adams* v. *Bell*, 711 F.2d 161, 167

(D.C. Cir. 1983) ("[t]he primary mechanism [for private enforcement] is a Title VI suit against the [recipient] itself"), cert. denied, 465 U.S. 1021 (1984)). The Court discounted the potential for interference between the express congressional federal agency enforcement scheme and private rights of action, implied by the judiciary, on the ground, suggested by us, "that if the possibility of interference arises in another case, appropriate action can be taken by the relevant court at that time" (441 U.S. at 706 n.41).

The practical effect of respondents' expansive reading of private enforcement of Title VI, however, would be to convert the federal agency enforcement mechanism into an avenue for private enforcement, ignoring the original impetus for implying private rights of action and also interfering with the express congressional agency enforcement scheme.[11] While the potential for such interference always offers a reason for limiting a judicially implied private right of action, the need is especially great in a case, such as this one, which arises in the context of congressional exercise of its power under the Spending Clause. "This is because the receipt of federal funds under typical Spending Clause legislation [such as Title VI] is a consensual matter: the State or other grantee weighs the benefits and burdens before accepting the funds and agreeing to comply with the conditions attached to their receipt" (*Guardians Ass'n* v. *Civil Service Comm'n*, 463 U.S. at 596 (opinion of

---

[11] See *University of California* v. *Bakke*, 438 U.S. at 419 n.26 (opinion of Stevens, J.) ("Arguably, private enforcement of th[e] 'elaborate mechanism' [for federal agency enforcement] would not fit within the congressional scheme.") (citations omitted).

White, J.); cf. *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1, 17-18 (1981)). No doubt for this reason, in Title VI, Congress instructed the federal agencies to rely in the first instance on informal conciliation efforts and voluntary means of compliance to resolve Title VI violations. Respondents' view of the role of private enforcement, including application of Section 1988 to their participation in informal agency-sponsored negotiations, takes no account of these significant congressional concerns and would unduly expand the role of private enforcement of Title VI in a manner that threatens the preeminent federal enforcement role.[12]

---

[12] There is also no clear authorization for a lawsuit, such as respondents', filed for the *sole* purpose of recovering attorney's fees under Section 1988. The plain words of Section 1988 do not appear to contemplate such a filing; the statute merely provides a court with discretion to award the prevailing party attorney's fees "[i]n any action or proceeding to enforce * * * Title VI" (42 U.S.C. 1988). Respondents, however, have not filed this action "to enforce * * * Title VI" and, consequently, do not appear to fall within the terms of the statute. To be sure, this Court has (in dicta) previously intimated in the context of reviewing the attorney's fee provision applicable to Title VII (42 U.S.C. 2000e-5(k)) that "[i]t would be anomalous to award fees to the complainant who is unsuccessful or only partially successful in obtaining [administrative] remedies, but to deny an award to the complainant who is successful in fulfilling Congress' plan that federal policies be vindicated at the [administrative] level" (*Carey*, 447 U.S. at 66; but see *id.* at 70-71 (Stevens, J., concurring)). These concerns, however, are not so weighty in the Title VI context where the administrative enforcement framework is not (as discussed previously) an indispensable element of private enforcement. Title VII, moreover, expressly authorizes a civil suit in federal court (see 42 U.S.C. 2000e-5(f)(1)), while private enforcement of Title VI depends on a right of action implied by the judiciary; consequently, maintenance of respondents' lawsuit depends on a further expansion of the scope of private rights of action under Title VI.

In this case, for example, there were never any formal agency administrative proceedings. Instead, USDOT initiated informal negotiations with petitioners, respondents, and other groups interested in the highway project, as part of the agency's efforts to promote voluntary means of compliance. It is hardly consistent with the informal or voluntary nature of those negotiations to suggest that participation of complainants, such as respondents, triggers the attorney's fee provision of Section 1988. Indeed, application of Section 1988 would likely stifle meaningful informal settlement discussions, contrary to Congress' explicit wishes in Title VI. Rather than working freely with others to reach a consensus position, complainants who have a potential ability to recover attorney's fees may be more likely to adopt an adversary posture consistent with the expectation that they would ultimately be reimbursed for their expenses. For this reason, the prospect that fees could be recovered against the recipient might lead to a refusal to allow the complainant to participate in the negotiations (leaving the federal agency and the recipient to work out the agreement).[13]

2. Finally, respondents may argue that our theory of the relationship between private and federal agency enforcement would have the effect of scuttling effec-

---

[13] Alternatively, should complainants continue to participate, application of Section 1988 could change the ultimate terms of the agreement; the recipient, knowing that it faces the prospect of attorney's fees, could simply be less willing to agree to incur expenses associated with the merits of the dispute.

tive informal negotiations by promoting the premature filing of lawsuits by parties who wish to be in a position to recover their attorney's fees. See H.R. Rep. 94-1558, 94th Cong., 2d Sess. 7 (1976) ("A 'prevailing party' should not be penalized for seeking an out-of-court settlement, thus helping to lessen [court] congestion."). "We cannot assume[, however,] that an attorney would advise the client to forego an available avenue of relief solely because § 1988 does not provide for attorney's fees for work performed in the * * * administrative forum" (*Webb*, slip op. 7 n.15). But, in all events, any such argument would underestimate the full import of our view of the proper relationship between private enforcement of Title VI and the federal administrative framework for compliance review and enforcement under Title VI.

Simply put, a complainant may not be required to exhaust the federal administrative proceedings, but the absence of an exhaustion requirement does not place private judicial enforcement on an equal (let alone higher) footing than federal agency enforcement. Rather, exhaustion is unnecessary only because the administrative remedy, while central to Title VI enforcement, was not intended to be an avenue of private relief, not because private judicial enforcement can ignore the administrative enforcement framework expressly created by Congress. Private enforcement, which is permitted by inference from the statutory scheme, should always be tempered by the needs of the explicit statutory requirements of federal agency administrative enforcement and compliance review. Hence, if requested by the federal government, a court should normally stay a private Title VI enforcement action pending completion of

federal administrative efforts, including investigation, conciliation efforts, and remedial determinations, in order to avoid any potential interference between private enforcement and the federal agency's own enforcement efforts. See *Cannon*, 441 U.S. at 687 n.8.[14] A preemptive filing of a lawsuit by a complainant consequently would not necessarily entitle the complainant to an award of attorney's fees in the event (as in this case) that the federal agency efforts led to a favorable resolution. The availability of a private right of action to sue a recipient in court does not mean that a private complainant is completely free to seek judicial relief without any regard to the federal agency's right, in the first instance, to make reasonable efforts to resolve the controversy either on its own or, should the agency prefer, with the assistance of both the complainant and the recipient. To be sure, under our view, private enforcement might occasionally be stayed pending federal agency enforcement efforts, but we believe that result is consistent with the statutory scheme envisioned by Congress when enacting Title VI.[15]

---

[14] Of course, the converse is equally true. The federal agency is not generally obliged to act first and may simply defer to the private enforcement proceeding.

[15] Of course, hypothetical circumstances may exist where a private individual might be able to maintain a legitimate claim for attorney's fees for time spent in administrative proceedings under the theory that time spent in those proceedings was "reasonably expended *on the litigation* * * *" (*Webb*, slip op. 8 (emphasis in original), quoting *Hensley* v. *Eckerhart*, 461 U.S. 424, 433 (1983)). This would require at least a showing that a "discrete portion of the work product from the administrative proceedings was work that was useful and of a type ordinarily necessary to advance the * * * litigation" (*Webb*, slip op. 9). Here, of course, there was no litigation

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

CHARLES FRIED
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

CAROLYN B. KUHL
Deputy Solicitor General

RICHARD J. LAZARUS
Assistant to the Solicitor General

BRIAN K. LANDSBERG
MARIE KLIMESZ MCELDERRY
Attorneys

APRIL 1986

---

and, accordingly, such an alternative showing is not available to respondents. Respondents' effort to intervene in a pending (non-Title VI) lawsuit, never acted on by the district court, was incidental to the settlement agreement and does not supply the necessary threshold "litigation." As the district court found (Pet. App. 39), "there is no evidence that the * * * effort[] * * * significantly contributed to the execution of * * * [or] was even a catalyst to the [Final Mitigation] Plan."

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 491507 20183